

K-C 17,413C
KCC 4801

Remarks

Claims 1, 4, 5 and 23 are amended, claim 3 is canceled and claims 41 and 42 are added herein. Claims 1 and 4-42 will be pending upon entry of this amendment.

Claims 1 and 23 are amended to improve the form of the claim and not for reasons relating to the patentability of the claims. Specifically, the term "gas" is replaced by the term "vapor" to more accurately reflect the present specification.

Applicants acknowledge the allowance of claims 23-39 in the Office action dated October 24, 2005.

Claims 3-10 were indicated in the Office action as being allowable if rewritten in independent form. New claim 41 corresponds to claim 3 rewritten in independent form to include the recitations of claim 1. Claim 3 has been canceled and claims 4 and 5 have been amended to depend from new claim 41. Accordingly, claim 41 and claims 4-10 dependent therefrom are submitted to be in form for allowance.

Response to Rejection of Claims under 35 USC §103**Claim 1**

Claim 1 stands rejected under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 6,702,801 (Van Gompel et al.).

Van Gompel et al. is disqualified as prior art under 35 U.S.C. §103(c)

"Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person." 35 U.S.C. §103(c)(1).

Van Gompel et al. is prior art only under section 102(e).

The present application was filed December 28, 2001, before publication of Van Gompel et al on January 24, 2002. Accordingly, Van Gompel et al. cannot be prior art to the present application under section 102(a) or 102(b). Van Gompel et al. has an effective filing date of

K-C 17,413C
KCC 4801

May 14, 2001, prior to the filing date of the present application, and therefore qualifies as prior art only under section 102(e).

Applicants note that Van Gompel et al. is a continuation-in-part application of U.S. Patent No. 6,132,410, which issued October 17, 2000 before the filing date of the present application. The '410 patent is also a continuation-in-part of U.S. Patent No. 6,264,641 which issued July 24, 2001, also before the filing date of the present application. As such, the '410 patent and the '641 patent may be prior art to the present application under section 102(a).

However, neither the '410 patent nor the '641 patent disclose or suggest each of the features recited in claim 1, and in particular each fails to disclose or suggest that the topsheet of the article is extensible.

Rather, any suggestion that the topsheet is extensible first appears in Van Gompel et al. (6,702,801) as cited by the Office in the October 18, 2005 Office action. Accordingly, Van Gompel et al. is prior art to the present application only under section 102(e).

The subject matter of Van Gompel et al. was developed "by another."

There are no common inventors between the present application and Van Gompel et al. Accordingly, the subject matter of Van Gompel et al. was developed by another person as required by section 103(c).

The subject matter of Van Gompel et al. and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Van Gompel et al. is assigned to Kimberly-Clark Worldwide, Inc. The present application is also assigned to Kimberly-Clark Worldwide, Inc. The inventors of the present application were each an employee of Kimberly-Clark Worldwide, Inc. at the time of making the invention claimed in the present application and had an obligation to assign the invention to Kimberly-Clark Worldwide, Inc. Accordingly, the subject matter of Van Gompel et al. and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

K-C 17,413C
KCC 4801

In view of the above, applicants submit that Van Gompel et al. is disqualified as prior art against the present application under 35 U.S.C. §103(c).

Claim 1 is also non-obvious in view of and patentable over Van Gompel et al.

Claim 1 is directed to an absorbent article comprising:

an outer cover adapted to stretch upon application of a load by a first amount;

a liquid and vapor permeable bodyside liner defining a bodyfacing surface and being generally superposed and coextensive with the outer cover, the bodyside liner being adapted to stretch upon application of the load by a second amount;

an absorbent body located between the bodyside liner and the outer cover and generally movable with the outer cover upon stretching of the outer cover; and

said first amount of stretch of the outer cover being greater than said second amount of stretch of the bodyside liner whereby a gap is formed between the bodyside liner and the absorbent body facilitating the flow of air and vapor through the bodyside liner in a loaded condition of the absorbent body, the bodyside liner being relatively more resilient when stretched than the outer cover.

Claim 1 is submitted to be non-obvious and patentable over the references of record, and in particular Van Gompel et al., in that whether considered alone or in combination the references fail to disclose or suggest 1) the first amount of stretch of the outer cover being greater than the second amount of stretch of the bodyside liner and 2) the bodyside liner being relatively more resilient when stretched than the outer cover.

The Office takes the position that Van Gompel et al. teaches that both the backsheet and the topsheet of Van Gompel et al. are extensible and that the absorbent body moves with the backsheet. Assuming for the sake of argument that such a characterization is correct, Van Gompel et al. still fail to teach or even suggest that the outer cover is more stretchable than the liner under the same load. In fact, there is no suggestion provided anywhere in Van Gompel et al. that would motivate one skilled in the art to provide the outer cover with more stretchability than the liner under the same load.

Recognizing the lack of such a teaching, the Office takes the position that such a difference in stretchability would have been obvious at the time of invention because it is not inventive to discover the optimum or workable ranges by routine experimentation, citing *In re*

K-C 17,413C
KCC 4801

Aller, 105 USPQ 233. However, *In re Aller* dealt with a situation in which the claim at issue recited a range of operating temperatures and acid concentrations and was held obvious in view of prior art that disclosed a the same subject matter but a different range of operating temperatures and acid concentrations. See MPEP 2144.05 directed to "Optimization of Ranges."

Contrary to the Office's position, Van Gompel et al. do not disclose the same general conditions recited in claim 1. That is, Van Gompel et al. do not disclose that the outer cover is more stretchable than the liner upon application of the same load. Moreover, claim 1 does not recite a range of stretchability of the liner and the outer cover, nor does it claim a range of stretch differential. Likewise, Van Gompel et al. do not disclose a range of stretchability of the backsheet and topsheet. Thus, there are no operating ranges disclosed by Van Gompel et al. that are being optimized in claim 1 of the present application. Accordingly, *In re Aller* is inapplicable to the present case.

In addition, the Office action does not even address the recitation in claim 1 that the bodyside liner is relatively more resilient when stretched than the outer cover. Indeed, Van Gompel et al. fail to even suggest such a feature.

For these reasons, claim 1 is submitted to be non-obvious in view of and patentable over the references of record.

Claims 11-22 and 40 depend either directly or indirectly from claim 1 and are submitted to be patentable for at least the same reasons as claim 1.

New Claim 42

New claim 42 recites, among other elements:

an outer cover adapted to stretch by a first amount upon application of a load;
the bodyside liner being adapted to stretch by a second amount upon application of the load, said first amount of stretch of the outer cover being greater than said second amount of stretch of the bodyside liner; and

the bodyside liner being free of connection to the absorbent body, whereby in a loaded condition of the absorbent body a gap is formed between the bodyside liner and the absorbent body facilitating the flow of air and vapor through the bodyside liner.

K-C 17,413C
KCC 4801

Applicants submit that Van Gompel et al. is not prior art against new claim 42 for the same reasons discussed above in connection with claim 1.

In addition, claim 42 is submitted to be non-obvious in view of and patentable over the references of record for at least the same reasons as claim 1. In particular, Van Gompel et al. fail to disclose or otherwise even suggest the first amount of stretch of the outer cover being greater than the second amount of stretch of the bodyside liner.

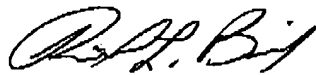
K-C 17,413C
KCC 4801

Conclusion

In view of the foregoing, favorable consideration and allowance of claims 1 and 4-42 is respectfully requested.

The Commissioner is hereby authorized to charge any underpayment and credit any overpayment of government fees to Deposit Account No. 19-1345.

Respectfully submitted,



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